



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-11963]

Notice of Proposed Exemption Involving J.P. Morgan Securities LLC, J.P. Morgan Investment Management Inc., J.P. Morgan Securities, and Chase Wealth Management (collectively, the Applicants); Located in Weehawken, New Jersey

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document gives notice of a proposed individual exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986, as amended (the Code) involving certain principal trades previously caused or executed by J.P. Morgan Securities LLC and J.P. Morgan Investment Management Inc. for certain non-ERISA plan clients.

DATES: If granted, the exemption will be in effect from December 14, 2010 until September 16, 2013. Written comments and a request for a public hearing on the proposed exemption should be submitted to the Department by [INSERT DATE 90 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security

Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D-11963 via email to e-OED@dol.gov or online through the Federal eRulemaking Portal: <http://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210. See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

As described in further detail below, J.P. Morgan Securities LLC (JPMS) and J.P. Morgan Investment Management Inc. (JPMIM) previously caused or executed prohibited principal transactions on behalf of certain plans covered by the Employee Retirement Income Security Act of 1974 (ERISA plans) and plans not covered by ERISA (non-ERISA plans). The Applicants corrected the ERISA plan-related prohibited transactions, which were reviewed and confirmed by an independent fiduciary, and received "no action

letters under the Department's Voluntary Fiduciary Compliance Program (the VFC Program).¹

The VFC Program is not available for corrections of non-ERISA plan-related prohibited transactions; therefore, the Applicants are seeking exemptive relief for their correction of prohibited principal transactions involving the Applicants and their non-ERISA plan clients (the Covered Transactions). The Applicants adhered to the same conditions to correct the Covered Transactions that they applied to correct the transactions involving their ERISA plan clients under the VFC Program.

Comments:

In light of the current circumstances surrounding the COVID-19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to submit paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption

¹ See 67 FR 15062 (Mar. 28, 2002), as updated at 71 FR 20262 (Apr. 19, 2006).

and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the Federal Register. The Department may decline to hold a hearing if:

(1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form. WARNING: All comments received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or

confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <http://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet.

Background:

This document contains a notice of proposed exemption that, if granted, would provide exemptive relief from the sanctions resulting from the application of Code Section 4975, by reason of Code Section 4975(c)(1)(A) and (D)-(E). The proposed exemption has been requested by JPMS and its affiliates pursuant to Code Section 4975(c)(2) in accordance with the Department's prohibited transaction exemption procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App 1 (1996) transferred the authority of the Secretary of the Treasury to issue

administrative exemptions under Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, this notice of proposed exemption is being issued solely by the Department.

SUMMARY OF FACTS AND REPRESENTATIONS²

1. JPMorgan Chase & Co. (JPMorgan) is a global financial services firm that provides investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing and asset management.

2. JPMS, an indirect wholly-owned subsidiary of JPMorgan, is a broker-dealer registered with the U.S. Securities and Exchange Commission (the SEC) and supervised by the Financial Industry Regulatory Authority, Inc. In addition, JPMS is an investment advisor regulated by the SEC as a "dual registrant." JPMS serves as an investment advisor under investment advisory programs offered by its retail brokerage lines of business, including the J.P. Morgan Securities division of JPMS (JPMS Brokerage). JPMS Brokerage serves as an investment adviser to ERISA-covered plans (the ERISA Plan Clients) and accounts and plans subject to Code Section 4975 that are not covered by ERISA

² The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in application D-11963 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

(the Non-ERISA Plan Clients). JPMS' ERISA and Non-ERISA Plan Clients participate in certain JPMS-sponsored wrap fee programs under the Chase Wealth Management (CWM) line of business (the CWM Wrap Program). Clients of these programs generally pay a bundled fee to the program sponsor and receive custody, trade execution, investment management, and other services.

3. JPMIM, an indirect wholly-owned subsidiary of JPMorgan, is an investment advisor registered with the SEC. JPMIM serves as an investment adviser for ERISA and Non-ERISA Plan Clients participating in the CWM Wrap Program. During the time period relevant to this proposed exemption, JPMIM was the overlay manager for one program and one of the offered portfolio managers of another program.

Covered Transactions Involving JPMIM

4. According to the Applicants, a JPMorgan employee conducted a routine monitoring of accounts in early July 2012, and noticed that a particular account number was not enabled to trade on JPM-X, an "alternative trading system" owned and operated by JPMS. According to the Applicants, the employee did not recognize the account was associated with JPMIM or an affiliate. Instead, the employee had seen documentation indicating that the account was associated with a non-affiliated third party. On July 27, 2012, the employee authorized the account for activation in JPM-X, including engaging in principal trading.

The Applicants state that, on July 30, 2012, the head of the Electronic Client Services (ECS) group noticed the JPM-X trading flow associated with the recently-activated account number had an account name that included a "jpmim" prefix. Based on that information, the head of the ECS group immediately de-activated the account for principal trading in JPM-X. The principal trades executed for the CWM Wrap Program were discovered a few months later in connection with a routine exam of JPMS by the SEC (the SEC Exam of JPMS). In total, 3,989 trades of securities issued by third-parties were executed for the CWM Wrap Program on a principal basis. Regarding these trades: (a) 3,985 were sales by a Non-ERISA Plan Client to a counterparty affiliated with JPMorgan (a JPM Counterparty), with an aggregate sales price of \$2,682,332.34 (the JPMIM Sales Transactions);³ and (b) four were purchases by a Non-ERISA Plan Client from a JPM Counterparty (the JPMIM Purchase Transactions) with an aggregate purchase price of \$46,940.55. The purchased shares had not been re-sold by the Non-ERISA Plan Client as of the date the transactions were corrected.⁴ The Applicants represent that JPMIM and JPMS endeavored to correct the prohibited transactions as quickly as possible in the manner described in paragraph 11 below.

5. The Applicants represent that the trades did not

³ These trades involved 3,784 Non-ERISA Plan Clients.

⁴ These trades involved two Non-ERISA Plan Clients.

result in any commissions being paid by the Non-ERISA Plan Clients to JPMIM or its affiliates. Rather, because the trades were executed under the CWM Wrap Program, no identifiable transaction compensation was paid in connection with either the JPMIM Sales Transactions or the JPMIM Purchase Transactions. The Applicants represent that JPMIM is no longer enabled to execute trades on JPM-X.

Covered Transactions Involving JPMS Brokerage

6. According to the Applicants, on December 14, 2010, January 13, 2011, February 3, 2012, December 31, 2012, August 22, 2013 and September 16, 2013, 15 trades involving JPMS Brokerage were mistakenly executed on a principal basis, although not on JPM-X. The Applicants state that JPMS Brokerage's compliance department discovered the Covered Transactions in connection with the SEC Exam of JPMS. Of the 15 trades: (a) two were sales of securities,⁵ where each sale was by a Non-ERISA Plan Client to a JPM Counterparty (the JPMS Brokerage Sales Transactions), with an aggregate sales price of \$61,854.54; and (b) 13 were purchases of securities by a Non-ERISA Plan Client from a JPM Counterparty (the JPMS Brokerage Purchase Transactions), with an aggregate purchase price of \$557,232.08.⁶ The purchased securities were subsequently sold by the Non-ERISA Plan Client before the prohibited transactions were discovered. The Applicants state that

⁵ These trades involved two Non-ERISA Plan Clients.

⁶ These trades involved seven Non-ERISA Plan Clients.

JPMS Brokerage endeavored to correct the prohibited transactions as quickly as possible in the manner described in paragraph 11 below.

7. The Applicants represent that the trades in question did not result in any commissions being paid by the Non-ERISA Plan Clients to JPMS or its affiliates. Rather, the trades were executed under the CWM Wrap Program. Further, no identifiable transaction compensation was paid in connection with either the JPMS Brokerage Sales Transactions or the JPMS Brokerage Purchase Transactions.

Other Prohibited Transactions, as Corrected Under the VFC Program

8. The Applicants represent that the errors and mistakes that gave rise to prohibited transactions involving the Non-ERISA Plan Clients also gave rise to prohibited transactions involving certain ERISA Plan clients of JPMIM and JPMS (the ERISA Plan Prohibited Transactions). The Applicants state that JPMIM and JPMS Brokerage corrected the ERISA Plan Prohibited Transactions pursuant to the requirements set forth in the VFC Program.⁷ The Applicants represents that they did not intend to

⁷ The Department notes that the VFC Program encourages the full correction of certain breaches of fiduciary responsibility and the restoration to participants and beneficiaries of losses resulting from those breaches. Persons potentially liable for certain types of ERISA fiduciary breaches may avoid certain civil action and penalties by fulfilling the Program's requirements. Several categories of transactions covered by the VFC Program also qualify for excise tax relief under class exemption 2002-51, if the conditions therein are met. See 67 FR 70623 (Nov. 25, 2002) as amended at 71 FR 20135 (Apr. 19 2006).

engage in the prohibited transactions and have implemented policies and procedures to prevent future occurrences of such (or similar) transactions.

JPMIM and JPMS filed VFC Program Applications 30-105378 and 30-105379, respectively, on December 31, 2014, and filed a supplement to those applications on July 1, 2015 (collectively, the VFC Program Applications). The Applicants received "no action" letters from the Department dated September 14, 2015, in connection with their VFC Program Applications for the ERISA Plan Prohibited Transactions.⁸

9. The Applicants state that although the Non-ERISA Plan Prohibited Transactions were entered into under similar circumstances as the ERISA Plan Prohibited Transactions (and in some cases pursuant to the same block trade) and corrected using the same methodology used to correct the ERISA Plan Prohibited Transactions, the Non-ERISA Plan Prohibited Transactions are ineligible for relief under the VFC Program and PTE 2002-51, as amended, because they involved transactions with Non-ERISA Plan Clients that are not covered under Title I of ERISA.⁹

⁸ In general terms, the Department may issue a "no action" letter to an applicant under the VFC Program, with respect to the breach identified in the application, if the applicable requirements of the VFC Program are satisfied.

⁹ In granting an amendment to PTE 2002-51, and in response to a comment to the proposed amendment, the Department noted, "the grant of this amendment does not foreclose [the Department's] future consideration of individual exemption requests for transactions that are outside the scope of relief provided by both the VFC Program and the class

Prohibited Transaction Analysis

10. Absent an exemption, the Covered Transactions violated several prohibited transaction provisions, because JPMS or JPMIM caused Covered Transactions to occur that resulted in JPMS or JPMIM receiving money or securities from the Non-ERISA Plan Client. Specifically, the Covered Transactions constitute: (a) a sale or exchange of property (i.e., money or securities) between a Non-ERISA Plan Client and a JPM Counterparty (a disqualified person) prohibited by Code Section 4975(c)(1)(A); (b) a transfer of plan assets (i.e., money or securities) from the Non-ERISA Plan Client to a JPM Counterparty (a disqualified person) prohibited by Code Section 4975(c)(1)(D); and (c) an act undertaken by JPMS or JPMIM to deal with plan assets in its own interest or for its own account prohibited by Code Section 4975(c)(1)(E).

Covered Transaction Corrections

11. The Applicants represent that the Covered Transactions were corrected using the same applicable methodologies described in the VFC Program that they used to correct similar prohibited transactions that occurred with their ERISA clients. The Applicants engaged an independent fiduciary, Evercore Trust Company, N.A.

exemption under circumstances when, for example a financial institution received a no action letter applicable only to plans subject to the Program for a transaction(s) that involved both plans and such IRAs." See 71 FR 20135 at 37.

(Evercore),¹⁰ to determine: whether the correction methodologies were properly applied, including verifying the market value of the securities at the time the prohibited transactions occurred; and whether the correction methodologies provided the Non-ERISA Plan Clients with a greater benefit than other correction methodology alternatives consistent with the VFC Program.¹¹

In a written report dated August 28, 2017, Evercore stated that it reviewed the correction methodology alternatives outlined in the VFC Program and considered the specific facts and circumstances related to the Covered Transactions. Based on the foregoing, Evercore determined that the correction methodologies utilized to correct the transactions: (a) were sufficient to return each affected Non-ERISA Plan Client to at least the position it would have been in had the Covered Transaction not occurred; (b) provided Non-ERISA Plan Clients with a greater benefit than other correction methodology alternatives, consistent with the VFC Program; and (c) were properly applied based on a

¹⁰ This proposed exemption requires, among other things, that there were no contractual provisions purporting to entitle Evercore, in whole or in part, to indemnification by the Applicants, or by a party related to the Applicants, for negligence or breach of federal or state law responsibilities by Evercore, with respect to any task performed by Evercore pursuant to the Applicants' exemption request.

¹¹ Evercore sold its institutional trust and independent fiduciary business to Newport Group Inc. and its subsidiary, Newport Trust Company (NTC). Since October 19, 2017, NTC has served as the independent fiduciary in connection with this proposed exemption. The Department understands that the non-indemnification (for negligence) provision in Evercore's engagement letter applies to NTC, because NTC became the successor of Evercore as a result of the acquisition.

review of a representative sample of the corrections selected at random by Evercore.

12. The Applicants describe the specific correction methodologies as follows:

(a) With respect to JPMIM Sales Transactions involving securities that had not been repurchased by the Non-ERISA Plan Clients, the corrections were calculated based on Section 7.4(b)(2)(ii) of the VFC Program, which permits monetary correction if an independent fiduciary determines the plan will receive a greater benefit than it would from rescission. The correction formula used was the sum of:

- (i) the excess, if any, of the fair market value of the shares on the correction date over the shares' original sale price; plus
- (ii) any transaction costs paid by the Non-ERISA Plan Client in the original transaction; plus
- (iii) lost earnings on the amounts described in (i) and (ii) calculated from the original sale date to the correction date.¹²

¹² The Applicants represent that the lost earnings were calculated in accordance with Section 5(b)(5) of the VFC Program. The Department notes that, in general terms, the amount of "lost earnings" calculable under Section 5(b)(5) approximates the amount that would have been earned by the affected plan on the "Principal Amount," but for the breach. The Applicants state that to ensure that the affected Non-ERISA Plan Clients (who had sold shares to JPM Counterparties) would receive the greatest benefit through the correction process, if the fair market value of the shares on the correction date was greater than the original sale price of the shares, that excess amount was paid to the Non-ERISA Plan Client. The Applicants state that technically, under the VFC Program rules, JPMorgan was not required to pay lost earnings on the excess amount, but to ensure that the affected Non-ERISA Plan Clients would receive the greatest benefit, JPMorgan determined that it was appropriate to pay lost earnings on the excess amount.

(b) With respect to the JPMIM Purchase Transactions where the Non-ERISA Plan Clients continued to hold the purchased securities prior to the date of correction, the correction amount was calculated based on Section 7.4(a)(2)(i) of the VFC Program. Under this correction procedure, the Non-ERISA Plan Clients were entitled to sell the securities for a price equal to the greater of: the fair market value of the shares on the correction date; or the sum of: (i) the original purchase price; plus (ii) any transaction costs (e.g., commissions) paid by the Non-ERISA Plan Clients in the original purchase; plus (iii) lost earnings on the items (i) and (ii) from the original purchase date to the correction date.

(c) With respect to the JPMS Brokerage Sales Transactions, the methodology used was the same methodology that was used for the JPMIM Sales Transactions.

(d) With respect to the JPMS Brokerage Purchase Transactions for which the Non-ERISA Plan Clients subsequently sold the purchased securities before the correction date, the correction amount was calculated based on Section 7.4(a)(2)(i) of the VFC Program.¹³ Under that methodology, the correction amount was determined by applying the following calculation: (i) the excess, if any,

¹³ Securities purchased in a prohibited transaction were matched to securities of the same type subsequently sold on a last-in-first-out basis.

of A over B (described below), plus (ii) lost earnings on such excess calculated from the prior resale date to the correction date. For purposes of this calculation, A is the greater of: (i) the fair market value of the shares at the time of resale; and (ii) the original purchase price plus any transaction costs paid by the client in the original purchase, plus any lost earnings on the original purchase price and transaction costs calculated from the original purchase date to the resale date, and B is the price received for the shares when they were resold, less any transaction costs paid by the client in the resale.

13. The Applicants represent that the Covered Transactions were inadvertent and that all of the Covered Transactions were executed at fair market value and achieved best execution. In this regard, the Covered Transactions were conducted using trading systems and procedures designed to result in the trades being conducted at prices that were as favorable as possible to the Non-ERISA Plan Clients under prevailing market conditions, and were in fact conducted at prices no less favorable to the Non-ERISA Plan Clients than the prices the financial advisers could have obtained for the Non-ERISA Plan Clients by conducting trades in arm's-length transactions with third-party market participants. In addition, the Applicants state that there were no identifiable profits to the JPM Counterparties in any of the Covered Transactions,

because all of the securities traded were liquid securities that JPMorgan and its affiliates regularly hold in inventory, deal in, or make a market in.

14. The Applicants represent that they have not taken advantage of the relief provided by the VFC Program and PTE 2002-51 for the three (3) years before the date of the Applicants' submission of the VFC Program Applications, and that the Covered Transactions were not part of an agreement, arrangement or understanding designed to benefit a disqualified person.

15. Based on the foregoing, as required by ERISA Section 408(a), the Department has tentatively determined that the proposed exemption is:

(a) Administratively feasible because, among other things, the corrections were performed in a manner consistent with the VFC Program and verified by Evercore, an independent fiduciary acting on behalf of the non-ERISA Plan Clients;

(b) In the interests of the affected Non-ERISA Plan Clients and their owners and beneficiaries because, among other things, the Non-ERISA Plan Clients were put in at least as favorable a position as they would have been had the Covered Transaction not occurred; and

(c) Protective of the rights of the owners and beneficiaries of the Non-ERISA Plan Clients because, among other things, the Covered Transactions have been

effectively unwound consistent with the requirements set forth in the VFC Program.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be provided to all interested persons within 60 days of the publication of the notice of proposed exemption in the *Federal Register*. The notice will be provided to all interested persons in the manner agreed upon by the Applicants and the Department and will contain a copy of the notice of proposed exemption as published in the *Federal Register* and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within 90 days of the date of publication of this proposed exemption in the *Federal Register*.

All comments will be made available to the public.

WARNING: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the

Internet and can be retrieved by most Internet search engines.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA Section 404(a)(1)(b); nor does it affect the requirement of Code Section 401(a) that requires plans to operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA Section 408(a) and/or Code Section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the

rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of Code Section 4975(c)(2) and in accordance with the Department's prohibited transaction exemption procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, October 27, 2011), as follows:

SECTION I: COVERED TRANSACTIONS

If the proposed exemption is granted, the sanctions

resulting from the application of Code Section 4975, by reason of Code Section 4975(c)(1)(A), (D) and (E), shall not apply, effective December 14, 2010, until September 16, 2013, to certain principal trades involving J.P. Morgan Securities LLC (JPMS), J.P. Morgan Investment Management Inc. (JPMIM), J.P. Morgan Securities (JPMS Brokerage), and Chase Wealth Management (CWM) (collectively, the Applicants), and certain of their client plans that are subject to Code Section 4975 but covered by not Title I of ERISA (the Non-ERISA Plan Clients). These principal transactions resulted in the Non-ERISA Plan Clients purchasing or selling securities from or to the Applicants (the Covered Transactions, as defined in Section II, below).

This exemption is subject to the conditions set forth below in Sections III and IV.

SECTION II: DEFINITION OF COVERED TRANSACTION

For purposes of this proposed exemption, the term "Covered Transaction" means:

(a) 3,989 trades of securities issued by third-parties that were executed on a principal basis for certain JPMS-sponsored wrap fee programs under the Chase Wealth Management line of business (i.e., the CWM Wrap Program) on or about July 27 and July 30, 2012. Of these trades: (i) 3,985 involved sales by a Non-ERISA Plan Client to a

counterparty affiliated with JPMorgan (a JPM Counterparty), with an aggregate sales price of \$2,682,332.34 (i.e., the JPMIM Sales Transactions); and (ii) four involved purchases by a Non-ERISA Plan Client from a JPM Counterparty (i.e. the JPMIM Purchase Transactions) and the purchased shares, with an aggregate purchase price of \$46,940.55, had not been re-sold by the Non-ERISA Plan Client as of the date the transactions were corrected; and

(b) 15 trades involving JPMS Brokerage that were executed on a principal basis on December 14, 2010, January 13, 2011, February 3, 2012, December 31, 2012, August 22, 2013 and September 16, 2013. Of these trades: (a) two involved sales of securities by a Non-ERISA Plan Client to a JPM Counterparty (i.e., the JPMS Brokerage Sales Transactions), with an aggregate sales price of \$61,854.54; and (b) 13 involved purchases of securities by a Non-ERISA Plan Client from a JPM Counterparty (i.e., the JPMS Brokerage Purchase Transactions), with an aggregate purchase price of \$557,232.08, that were purchased and subsequently sold by the Non-ERISA Plan Client before the prohibited transactions were discovered.

SECTION III: SPECIFIC CONDITIONS

(a) The Applicants corrected the Covered Transactions in a manner that was: (1) consistent with the relevant requirements set forth in the Department's Voluntary

Fiduciary Correction Program (the VFC Program); and (2) consistent with the Applicants' corrections of similar prohibited transactions involving its ERISA plan clients, as described in their VFC Program applications, dated December 31, 2014 (the VFC Program Applications);

(b) The Applicants received "no action letters" from the Department in connection with their VFC Program Applications;

(c) An independent fiduciary, Evercore Trust Company, N.A. (Evercore), reviewed the Applicants' corrections of the Covered Transactions;

(d) Evercore confirmed that the methods utilized to correct the Covered Transactions were properly applied to the Covered Transactions and sufficient to return each affected Non-ERISA Plan Client to at least the same position it would have been in had the Covered Transactions not occurred.

(e) The Non-ERISA Plan Clients did not pay any identifiable transaction costs with respect to the Covered Transactions;

(f) The Applicants promptly credited or issued a check to each Non-ERISA Plan Client to whom a corrective payment was due after discovering the Covered Transactions;

(g) The Covered Transactions were conducted using trading systems and procedures designed to result in trades being conducted at prices that are as favorable as possible

to the Non-ERISA Plan Clients under prevailing market conditions, and were in fact conducted at terms and prices no less favorable to the Non-ERISA Plan Clients than the prices the financial advisers could have obtained for the Non-ERISA Plan Clients by conducting trades in arm's-length transactions with third-party market participants;

(h) The Covered Transactions were not part of an agreement, arrangement or understanding designed to benefit a disqualified person, as defined in Code Section 4975(e)(2);

(i) The Applicants did not take advantage of the relief provided by the VFC Program and Prohibited Transaction Exemption 2002-51 for three (3) years prior to the date of the Applicants' submission of the VFC Program Applications;¹⁴

(j) The Applicants and their affiliates did not receive any identifiable direct or indirect compensation in connection with the Covered Transactions;

(k) The JPM Counterparties to the Non-ERISA Plan Clients did not receive any identifiable direct or indirect profit from the Covered Transactions;

(l) The Covered Transactions were inadvertent, executed at fair market value, and achieved best execution;

¹⁴ 67 FR 70623 (Nov. 25, 2002), as amended, 71 FR 20135 (April 19, 2006).

(m) All of the securities traded were liquid securities that JPMorgan and its affiliates regularly held in inventory, dealt in, or made a market in; and

(n) No contractual provisions purported to give Evercore or Newport Trust Company (i.e., NTC) a right to indemnification, in whole or part, by a party related to the Applicants, for negligence or breach of federal or state law responsibilities by Evercore or NTC, with respect to any task performed by Evercore or NTC pursuant to the Applicants' exemption request.

(o) All of the facts and representations set forth in the Summary of Facts and Representations are true and accurate.

SECTION IV: GENERAL CONDITIONS

(a) The Applicants maintain, or cause to be maintained, for a period of six (6) years from the date of any Covered Transaction such records as are necessary to enable the persons described in Section IV(b)(1) to determine whether the conditions of this exemption have been met, except that:

(1) A separate prohibited transaction shall not be considered to have occurred if the records are lost or destroyed before the end of the six-year period due to circumstances beyond the control of Applicants; and

(2) No disqualified person with respect to a Non-ERISA Plan Client, other than the Applicants, shall be subject to excise taxes imposed by Code Section 4975 if such records are not maintained or made available for examination as required by Section IV(b) (1), above.

(b) (1) Except as provided in Section IV(b) (2), the records referred to in Section IV(a) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any Non-ERISA Plan Client that engaged in a Covered Transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any owner or beneficiary of a Non-ERISA Plan Client that engaged in a Covered Transaction or a representative of such owner or beneficiary.

(2) None of the persons described in Sections IV(b) (1) (B) and (C) shall be authorized to examine the Applicants' trade secrets or privileged or confidential commercial and financial information.

(3) If the Applicants refuse to disclose records referred to in Section IV(a) to any persons described in Sections IV(b) (1) (B), and (C) on the basis that such information is exempt from disclosure, the Applicants shall

provide a written notice advising such persons of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following their request.

EFFECTIVE DATE: The proposed exemption, if granted, will be in effect from December 14, 2010 until September 16, 2013.

Signed at Washington, DC, this 27th day of September, 2021.

G. Christopher Cosby,
Acting Director,
Office of Exemption
Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.

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